IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5704 of 2001
with
CIVIL APPLICATION NO. 462 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEPUTY EXECUTIVE ENGINEER PANCHAYAT SUB DIVISION-2
Versus
JITENDRAKUMAR RANCHHODBHAI BHATT

Appearance:
1. Special Civil Application No. 5704 of 2001
MS SEJAL K MANDAVIA for Petitioner No. 1
MR AMAR D MITHANI for Respondent No. 1
2. Civil Application No. 462 of 2002 :

Mr. Amar Mithani for applicant-respondent
Ms. Sejal K. Mandavia for opponent-original petitioner.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/01/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Sejal K. Mandavia for the petitioner and Mr. Amar Mithani for the

respondent workman. Rule. Service of rule is waived by Mr. Amar Mithani, the learned advocate for the respondent workman. In the facts and circumstances of the case, the matter has been taken up for final hearing today itself, with the consent of the learned advocates for the parties.

By way of this petition, the petitioner has challenged the judgment and award made by the labour court, Junagadh dated 5.10.2000 in Reference (LCJ) No. 86 of 1994 whereby the labour court has allowed the said reference in part and has ordered to reinstate the respondent workman with continuity of service and with 20 per cent of the back wages for the intervening period.

In this petition, notice was issued by this court on 19.9.2001 by making it returnable on 3.10.2001 and interim relief in terms of para 10(C) of the petition was also granted. In this petition, the respondent workman has filed the aforesaid civil application and has prayed for vacating the interim relief or to grant the benefits under section 17B of the Industrial Disputes Act.

During the course of hearing, learned advocate Ms. Mandavia for the petitioner has submitted that the services of the respondent workman were alleged to have been terminated on 1st November, 1987 and, thereafter, the respondent has raised the industrial dispute after about seven years and the matter has been referred for adjudication by the Assistant Commissioner of Labour, Porbandar on 14th July, 1994 and, therefore, there was delay in raising the dispute which has remained unexplained and, therefore, the labour court ought not to have entertained the reference on merits and it ought to have rejected the same on that ground alone. In support of such submission, she has relied upon the decision of the apex court in case of Indian Iron and Steel Co. Ltd. v. Prahlad Singh reported in 2001(1) SCC 424. The next contention raised by her is to the effect that after the termination of the services of the respondent, retrenchment compensation has been paid to the respondent workman on 7th November, 1987 and that can be considered to be sufficient compliance of section 25-F of the Industrial Disputes Act, 1947. However, the labour court has set aside the order of termination only on the technical ground and has granted reinstatement with 20% of the back wages. Therefore, according to her, the labour court has committed an error in making an award of reinstatement with 20% back wages for the intervening period. The third contention raised by her is to the effect that the labour court has granted 20 per cent back

wages though the workman has admitted in his deposition that he has been gainfully employed and has been earning Rs.400.00 per month. According to her, in view of the admission of the workman that he has been gainfully employed and has been earning, the labour court ought not to have awarded back wages in favour of the respondent workman. The last contention raised by her is to the effect that the services of the respondent workman were terminated because the work was not available. However, this aspect has not been considered by the labour court while deciding the reference.

On the other hand, learned advocate Mr. Mithani has submitted that no doubt, there was delay in raising industrial dispute. However, from reading of para 3 of the impugned award wherein the labour court has referred the contentions raised by the petitioner, it does not appear that any such contention about delay in raising dispute has been raised by the petitioner before the labour court. From reading of para 3 of the impugned award, it appears that before the labour court, the petitioner has raised the contention that since the work has been reduced substantially, the said rojamdar was discharged as not required and this has resulted in termination of the services of the respondent workman and retrenchment compensation and one month notice has already been given by the petitioner and such amount was accepted by the respondent workman and, therefore, there was no need to set aside the order of dismissal. Mr. Mithani, learned advocate for the respondent workman has, thus, submitted that no such contention about delay has been raised by the petitioner before the labour court. He has also submitted that before the labour court, documents were produced by both the sides but the petitioner has not produced the seniority list, muster roll, pay register though production application was submitted by the respondent workman before the labour court. He has also submitted submitted that it was not in dispute that the respondent workman has completed 240 days' continuous service within 12 calender months preceding the date of termination. The only question was regarding noncompliance of section 25-F of the Industrial Disputes Act, 1947 and, therefore, according to him, the labour court was right in examining this aspect and after considering the factual aspects, on the basis of the documents which were on the record before the labour court, the labour court has come to the conclusion that the termination is illegal and contrary to section 25-F of the Industrial Disputes Act, 1947. According to him, the labour court has considered the evidence of the respondent workman and has rightly granted back wages to

the extent of 20% for intervening period which cannot be said to be on higher side since the respondent workman was not able to get complete gainful employment during the intervening period. Therefore, according to his submission, the labour court has not committed any error in passing the award of reinstatement with 20% back wages and, therefore, this Court should not interfere with the impugned award in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the parties. I have perused the impugned award made by the labour court concerned. I have also considered the contention raised by Ms. Mandavia as regards delay on the part of the workman in raising the industrial dispute. In this context, I have perused the award of the labour court. In written statement filed before the labour court, no such contention has been raised by the petitioner. Not only that, no such submissions were made by the petitioner before the labour court. Not only that, the order of reference dated 14th July, 1994 has also not been challenged by the petitioner on the ground of delay. If such contention would have been raised before the labour court, then, the labour court would have examined it and would have given findings on it. Therefore, in view of these peculiar aspects of the matter, the decision of the apex court reported in [2001] 1 SCC 424 is not applicable to the facts of the present case because in the case before the apex court, specific contention to that effect was raised by the employer before the tribunal that the reference has been made after 13 years without explanation. In the said decision, this aspect was examined by the tribunal and the tribunal has come to the conclusion that the reference has been made after about 13 years which remained unexplained and, therefore, the tribunal has rejected the reference only on the ground of delay. In para 10 of the said decision, it was observed by the apex court that whether the relief can be declined on the ground of delay and laches would depend on the facts and circumstances of each case. Therefore, on facts, the decision of the apex court is not applicable to the present case. Still, one question would remain, whether the validity and legality of the reference itself can be examined by the labour court or not. Though I am not giving any opinion on it, it is still a question whether it is within the jurisdiction of the labour court or the tribunal or not. The labour courts or the tribunals are having jurisdiction to determine or adjudicate the dispute referred to it for adjudication. Naturally, any question which is beyond the scope or

terms of reference cannot be examined by the labour court. However, all these are the questions which are not required to be discussed any more in this case. However, in case of Mahavir Singh versus UP State Electricity Board, reported in 1999 (2) CLR page 7, as regards the delay of about 9 years, the apex court has observed that mere delay does not cease the industrial dispute. In the instant case, the labour court has taken care and has not granted full back wages but has granted only 20 per cent back wages for the intervening period and, therefore, the contention of Ms. Mandavia that the labour court ought to have rejected the reference on the ground of delay cannot be accepted and the same is, therefore, required to be rejected.

As regards the contention of Ms. Mandavia that since there was no work available and there was decrease in work, the labour court ought not to have ordered reinstatement, the labour court has examined the evidence of the respondent workman on oath wherein he has submitted that the persons junior to him were retained by the petitioner and his services were terminated by the petitioner. He has also deposed before the labour court that the work which was available at the time when his services were terminated is available with the petitioner. Before the labour court, such assertions made by the workman were not controverted by the petitioner in the cross examination of the workman. Thus, fact finding has been recorded by the labour court that the work available with the petitioner at the time of termination of the services of the workman was available with the petitioner and that the persons junior to the workman were retained while terminating the services of the workman. Ms. Mandavia, learned advocate for the petitioner has not been able to assail such findings of fact. She has also not been able to point out as to how such findings are contrary to the evidence on record before the labour court. Therefore, such contention raised by Ms. Mandavia cannot be accepted.

The next contention raised by her is regarding the compliance of section 25-F of the Industrial Disputes Act, 1947. According to her, there was sufficient compliance of section 25-F of the Industrial Disputes Act. Admittedly, the services of the respondent workman were terminated by notice dated 28th September, 1987 and under the said notice, the respondent was directed to collect the retrenchment compensation from the office of the petitioner on 7th November, 1987 whereas the services were terminated with effect from 1st November, 1987. Therefore, according to my opinion, at the time of

termination of his services i.e. on 1st November, 1987, no retrenchment compensation has been paid to the respondent workman. According to my opinion, mere mention made in the notice of termination to collect the amount of retrenchment compensation from the office cannot be said or considered to be the sufficient compliance of section 25-F of the Industrial Disputes Act, 1947. According to my opinion, the amount of retrenchment compensation is required to be paid immediately on the date of termination as per the view taken by this Court in case of Gujarat Rural Housing Board versus Kanubhai H. Lodha reported in 2001 (2) GLH (UJ) 14. In para 24 of the said decision, this Court has observed as under :

"24. It appears that the money order was sent for the compliance of section 25-F of the Act by the petitioner to the respondent but that was not alongwith the order itself. The law does not permit tender of money payable under section 25(F) of the Act after the tender of order itself. In fact, the termination order or the retrenchment order and the payment both should go together hand to hand. In the present case, it is found that even the order dated 30th July, 1983 at page No. 43 was not served upon the respondent alongwith amount payable under Section 25(F) of the Act. "[Emphasis supplied].

In the instant case, admittedly, it is not the case of the petitioner that the termination order and the amount of retrenchment compensation was paid to the respondent workman simultaneously, hand to hand. Therefore, as per the view taken by this court in aforesaid decision, it cannot be said that there was sufficient compliance of section 25-F of the Industrial Disputes Act, 1947. It appears that the money order was sent to the respondent for compliance of section of section 25-F of the Act but admittedly that was not alongwith the order itself. After tender of the order of termination or retrenchment, in fact, payment of retrenchment compensation should go together, hand to hand. In light of these factual aspects of the matter, it has been observed by this Court that when on appreciation of the evidence, the labour court has come to the conclusion that there was non compliance of section 25-F of the Industrial Disputes Act, 1947, it is not open for this Court to disturb such findings in absence of any material. Therefore, according to my opinion, the labour court has rightly held that there was no sufficient compliance of section 25-F of the

Industrial Disputes Act. Such findings were recorded by the labour court on the basis of the facts which are not disputed by the petitioner. Therefore, the contention raised by Ms. Mandavia as regards sufficient compliance of section 25-F of the Industrial Disputes Act, 1947 cannot be accepted and the findings recorded by the labour court concerned in that regard cannot be disturbed.

Lastly, Ms. Mandavia has raised the contention that the grant of back wages for the intervening period is unwarranted. According to her, services of the respondent workman were terminated in the year 1987 with effect from 1st November, 1987 whereas the industrial dispute was raised by the respondent workman in the year 1994 and the labour court has, without applying its mind on that aspect, granted back wages from the date of termination and, therefore, the order of back wages is required to be set aside. She has further submitted that the termination order has been set aside by the labour court only on the technical ground of non compliance of section 25-F of the Industrial Disputes Act, 1947 and, therefore, while making the award of reinstatement, the labour court ought not to have awarded back wages. In support of her contention in that regard, she has relied upon the decision of the apex court in case of Zila Sahakari Kendriya Bank Mariyadit versus Jagdishchandra and others reported in 2001 AIR SCW 922. Relying upon the said decision, she has submitted that in said case, dismissal order has been set aside only on the ground that the departmental inquiry was not held and the apex court has considered that the order directing payment of back wages cannot be sustained.

In view of the facts of the present case and also in view of the submissions made by Ms. Mandavia and considering the aforesaid decision of the apex court, according to my opinion, there is some substance in the contention raised by Ms. Mandavia in so far as the grant of back wages in favour of the workman is concerned because, admittedly, the services of the respondent workman were terminated in the year 1987 on 1st November, 1987 whereas the industrial dispute has been raised in the year 1994 and the workman has, thus, remained silent for about seven years' period in raising the dispute. These facts ought to have been kept in view by the labour court while considering the question of back wages in view of the decision of the apex court Zila Sahakari Kentriya Bank Mariyadit (supra). In the said decision, the apex court has observed that once it was held that services were terminated unlawfully then as a necessary

consequence the employee would be entitled to back wages. However, in the said decision, the award of back wages was set aside on the ground that the termination was set aside only on technical ground in as much as no inquiry was conducted and, therefore, in that view of the matter, order qua back wages was set aside by the apex court.

In the instant case also, according to my opinion, the labour court has committed gross error in granting 20 % back wages in favour of the workman from the date of termination since the dispute was raised belatedly, after the period of about seven years. Therefore, that part of the award is required to be set aside while confirming the rest of the award made by the labour court.

For the reasons stated above, this petition is partly allowed. The impugned award made by the labour court, Junagadh in Reference (LCJ) NO. 86 of 1994 dated 5th October, 2000 is set aside in so far as it relates to grant of back wages at the rate of 20% for the intervening period and the rest of the award made by the labour court in respect of reinstatement with continuity of service of the respondent workman is confirmed. Rule is made absolute in terms indicated hereinabove with no order as to costs. Interim relief granted earlier shall stand vacated forthwith.

In view of the aforesaid order passed in the main special civil application, civil application No. 462 of 2002 filed by the respondent workman shall not survive.

21.1.2002. (H.K. Rathod,J.)
Vyas